

Eubanks, Sharon (CIV)

From: Robinson, Matt
Sent: Wednesday, June 08, 2005 5:33 PM
To: Magnuson, Cynthia; McCallum, Robert (SMO); Madden, Kevin; Scolinos, Tasia
Cc: Meron, Daniel (CIV); Keisler, Peter D. (CIV); Reyes, Luis (SMO); Sampson, Kyle; Eubanks, Sharon (CIV)
Subject: RE: FINAL DRAFT

Please hold up. The White House wanted some changes.

-----Original Message-----

From: Magnuson, Cynthia
Sent: Wednesday, June 08, 2005 5:30 PM
To: McCallum, Robert (SMO); Madden, Kevin; Scolinos, Tasia
Cc: Robinson, Matt; Meron, Daniel (CIV); Keisler, Peter D. (CIV); Reyes, Luis (SMO); Sampson, Kyle; Eubanks, Sharon (CIV)
Subject: RE: FINAL DRAFT
Importance: High

I am sending to USA Today now

From: McCallum, Robert (SMO)
Sent: Wednesday, June 08, 2005 5:27 PM
To: Magnuson, Cynthia; Madden, Kevin; Scolinos, Tasia
Cc: Robinson, Matt; Meron, Daniel (CIV); Keisler, Peter D. (CIV); Reyes, Luis (SMO); Sampson, Kyle; Eubanks, Sharon (CIV)
Subject: RE: FINAL DRAFT

I am good to go with it. Robt.

-----Original Message-----

From: Magnuson, Cynthia
Sent: Wednesday, June 08, 2005 5:24 PM
To: Madden, Kevin; McCallum, Robert (SMO); Scolinos, Tasia
Cc: Robinson, Matt; Meron, Daniel (CIV); Keisler, Peter D. (CIV); Reyes, Luis (SMO); Sampson, Kyle
Subject: FINAL DRAFT
Importance: High

The Justice Department has taken the necessary steps over the last nine months to curb decades of fraudulent behavior by the tobacco defendants. The current civil RICO case is intended to protect the American public from misrepresentations and abuses that continue to this day.

First and foremost, the government's suggested cessation program comports with the recent decision of the Circuit Court of Appeals. The United States vigorously argued for a \$280 billion disgorgement remedy based upon the decades of fraudulent behavior. This spring, the Circuit Court ruled in favor of the tobacco industry, reversing a prior decision of the trial court on remedies, and held that any remedies in the case must be "forward looking" to prevent and restrain future wrongful acts, rather than to address even lingering consequences of past wrongful acts. After the denial of rehearing sought by the government, both the trial court and the government are bound by this decision.

Equally important is the fact that the suggested cessation program, as proposed by the government in closing arguments, is only an initial requirement, one based upon the compelling evidence that the defendants will continue to commit frauds into the immediate future. If court-appointed monitors find that the defendants continue to commit acts of fraud in the future, the court can extend and expand the cessation program to exceed the \$10 billion/5 year program proposed yesterday in order to prevent and restrain the continuation of fraudulent activities by the tobacco companies. Under such circumstances, the overall length and cost of the proposed

remedy is open-ended and could be less than, equal to, or more than the expert witness study introduced into evidence by the government which suggested a \$130 billion/25 year cessation program. The government's current proposal is therefore forward-looking, focused on future frauds by the defendants, and entirely consistent with the Circuit Court opinion.

Critics have questioned the motives behind the government's cessation program proposal. But its form and structure are dictated by the applicable law. The cessation remedy is but one element of a comprehensive and coordinated array of solutions to prevent and restrain the defendants from future frauds. It does not abandon, but rather embraces, the costing methodology the government has presented with expert testimony, and then applies that methodology-as the Court of Appeals decision requires-to future frauds rather than past acts."

Eubanks, Sharon (CIV)

From: Robinson, Matt
Sent: Wednesday, June 08, 2005 6:11 PM
To: Magnuson, Cynthia; McCallum, Robert (SMO); Madden, Kevin; Scolinos, Tasia
Cc: Meron, Daniel (CIV); Keisler, Peter D. (CIV); Reyes, Luis (SMO); Sampson, Kyle; Eubanks, Sharon (CIV)
Subject: RE: FINAL DRAFT

President Bush and his Administration have proven time and again a strong commitment to holding the tobacco industry accountable for past fraud and abuse. Over the last nine months, the United States Department of Justice has made a strong and decisive case showing decades of fraudulent behavior by companies within the tobacco industry.

One key component of that work has been litigation under a federal racketeering statute requiring that tobacco companies devote a portion of their profits to programs that help smokers quit. That litigation has been a critical component of this federal effort to protect the American public from the misrepresentations and abuses that continue to this day.

To understand the government's position it is important to understand recent decisions by the Circuit Court of Appeals. Earlier this spring, the Circuit Court ruled in favor of the tobacco industry (reversing a prior decision of the trial court) holding that any remedies in tobacco litigation must be "forward looking." The Court reasoned that government efforts must be aimed at preventing and restraining *future* wrongful acts, rather than focused on lingering consequences of past wrongful acts.

We continue to disagree with that ruling, but we of course abide by it.

The government had vigorously argued for a \$280 billion fine based upon decades of fraudulent behavior and ill-gotten gains. But with the Circuit decision, the government is bound to abide by the law.

The government still supports a strong tobacco cessation program.

But as a result of the ruling, we have argued for a more limited penalty. This \$10 billion cessation program, as laid out by the government in yesterday's closing arguments, would only be an initial requirement.

If court-appointed monitors find that the industry continues to commit acts of fraud in the future, the court can *extend* and *expand* the cessation program to exceed the \$10 billion proposed by the government. Government prosecutors would then take further steps to prevent and restrain continuing fraud. If that were to happen, the overall length and cost of the proposed remedy is open-ended and would depend upon studies of the number of American smokers.

The government's proposed remedy is therefore forward-looking, focused on potential future frauds by the defendants, and entirely consistent with the circuit court opinion and with our responsibility to enforce the law and protect the American public, smokers and non-smokers alike.

It is important to remember that the government's cessation efforts and remedies are but *one* element of a comprehensive and coordinated array of solutions focused on preventing and restraining the defendants from future acts of fraud. Today's decision does not abandon, but rather embraces, the very costing methodology the government has presented with expert testimony. But as we have shown today, the government is implementing that methodology in accordance with the Court of Appeals decision and in a way that allows the government to focus on future acts of fraud with penalties and prosecutions appropriate to the protection of the health and

welfare of all Americans.

Eubanks, Sharon (CIV)

From: Madden, Kevin
Sent: Wednesday, June 08, 2005 6:20 PM
To: Robinson, Matt; Magnuson, Cynthia; McCallum, Robert (SMO); Scolinos, Tasia
Cc: Meron, Daniel (CIV); Keisler, Peter D. (CIV); Reyes, Luis (SMO); Sampson, Kyle; Eubanks, Sharon (CIV)
Subject: RE: FINAL DRAFT

WH says it's good to go.

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